

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 358 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

MOHMEDBHAI B PATHAN

Versus

NARANBHAI DAJIBHAI THAKORE

Appearance:

Mrs. Yogini Parikh, Advocate, for
MR KG SHETH for Petitioners
MR HM PARIKH for Respondent No. 1 and 2
MR RR MARSHALL for Respondent No. 3
NOTICE SERVED for Respondent No. 4

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 22/07/1999

ORAL JUDGEMENT

1. Appellants-Claimants, who are dependents of deceased Aiyub, have filed this appeal under Section 110-A of the Motor Vehicles Act, 1939, challenging judgment and award dated March 22, 1984, rendered by the Motor Accidents Claim Tribunal (Aux.), Kheda, at Nadiad, in M.A.C. Petition No.438 of 1981, by which, the claim petition filed by the appellants came to be dismissed.

2. On March 15, 1980, deceased Aiyub was on the steering wheel of a disabled truck bearing RTO Registration No. GTK 2113, and it was towed by a truck bearing RTO Registration No.GTG 3627 which was driven by

its driver, Naranbhai Dajibhai Thakre (respondent No.1), owned by respondent No.2, and insured with respondent No.3, the United India Fire and General Insurance Company. Deceased Aiyub was the conductor of the disabled truck whereas Budhaji Chhanaji was the driver of the disabled truck. Truck bearing No.GTG 3627 was driven rashly and negligently by its driver, respondent No.1. At the relevant time, Aiyub was at the steering wheel of the disabled truck. Truck bearing No.GTG 3627 took a turn abruptly in a high speed, as a result of which the rope with which the disabled truck was tied caught entangled and the disabled truck had turned turtle as a result of which Aiyub was thrown out of the truck and he sustained serious injuries. Aiyub was removed to Kapadwanj Hospital where he was declared dead.

3. Appellant No.1 is the father and appellant No.2 is the mother of deceased Aiyub. They filed M.A.C. Petition No.438 of 1981 in the Motor Accidents Claim Tribunal (Aux.), Kheda, at Nadiad, claiming compensation of Rs.50,000/- for the accidental death of deceased Aiyub due to rash and negligent driving of Truck bearing Registration No.GTG 3627 by respondent No.1.

4. Respondents Nos. 1 and 2, who were driver and owner of the offending truck, respectively, filed written statement Exh.4, inter alia, denying all the allegations and averments made in the claim petition. Respondents Nos. 1 and 2 contended that the deceased Aiyub did not hold valid driving licence and still he occupied the steering wheel. It was denied that the offending truck was driven rashly or negligently by respondent No.1. It was also denied that respondent No.1 took a sudden turn and applied brakes as a result of which the disabled truck turned turtle. Respondent Nos. 1 and 2 also denied about the income of deceased Aiyub and prayed that claim petition be dismissed with costs.

5. Respondent No.3 filed its written statement Exh.9, inter alia, contending that the claim of Rs.50,000/- of the appellants was highly excessive and it was denied that respondent No.1 was towing the disabled truck and deceased Aiyub was the driver of the said disabled truck. It was contended that the driver of truck bearing Registration No.GTG 3627 did not possess valid driving licence and the truck was not issued valid permit. It was further contended that the deceased was not having valid driving licence to drive a truck. It was further contended that the driver of the disabled truck never entrusted the truck to deceased Aiyub, but he

was only asked to watch the disabled vehicle. It was also contended that the owner of the truck No.GTG 3627 had committed breach of the terms and conditions of the policy and, hence, the claim petition be dismissed.

6. On the aforesaid pleadings of the parties, necessary issues were framed by the Tribunal at Exh.14. The claimant-appellant No.1 was examined at Exh.37 and he deposed that the deceased at the time of the accident was 20 to 22 years old and was earning Rs.300/- per month, and he was also getting Rs.10/- per day as allowance. The appellant No.1 also deposed that the deceased possessed a driving licence. It was pleaded that both the appellants were depending on the deceased as the deceased was the only bread-winner of the family. The eye-witness, namely, Kalaji Mangaji, was examined at Exh.38, who was a passenger in the disabled truck. This witness, after the accident, had lodged a complaint against the offending vehicle, i.e. truck bearing Registration No.GTG 3627. Witness Kalaji Mangaji deposed that the driver of the disabled truck had instructed deceased Aiyub to bring the truck in the towing condition to get it repaired. The witness deposed that truck bearing Registration No.GTG 3627 which was driven by respondent No.1 came near the disabled truck which was lying at Ladway Cross Roads. Respondent No.1 tied his truck with disabled truck. According to the witness, they had instructed respondent No.1 that in case if he applies brakes, he should give warning to deceased Aiyub who was on the steering wheel of the disabled truck. It is deposed by witness Kalaji Mangaji that the truck was driven with a speed of 70 to 80 kms. According to the witness, when they had travelled for a distance of 1 km. rope had broken down and the disabled truck was thrown in a ditch. He deposed that deceased Aiyub was thrown out of the truck and had sustained serious injuries and therefore he was removed to Kapadwanj Hospital. He also deposed that he lodged first information report at Kapadwanj Police Station against the driver of truck No.GTG 3627. During cross examination, the witness deposed that deceased Aiyub did possess driving licence and he had seen the driving licence of deceased Aiyub.

7. On behalf of the Insurance Company, one Punitkumar Ishwarlal Bhatt, Inspector of the Insurance Company, was examined at Exh.55. He deposed that vehicle No.GTK 2113 was insured with the United India Insurance Company Limited. It is also deposed that the said vehicle had met with the accident and the necessary form with regard to accident was filled in by the owner of the disabled truck, namely, Ishubhai Jamnadas Sheth. The

claimants and the respondents had also produced documentary evidence such as panchanama Exh.20, xerox copy of licence of the deceased Exh.23, certified copy of the judgment in Criminal case No.664 of 1980, Exh.24, rendered by the learned Judicial Magistrate, First Class, Kapadwanj, wherein, respondent No.1 came to be acquitted for rash and negligent driving. The insurance policies of both the trucks were also produced at Exh.28 and Exh.43.

8. The Motor Accidents Claim Tribunal, Kheda, at Nadiad, on over all appreciation of oral as well as documentary evidence, came to the conclusion that deceased Aiyub did not possess valid licence and, even though he was conductor, he occupied the seat of the driver and had driven the disabled truck. The Tribunal had held that no unlicensed person can occupy the steering wheel of the disabled truck. The Tribunal further concluded that the deceased did not have any authority to drive the disabled truck and he himself was rash and negligent in driving disabled truck and, hence, as the accident had taken place due to his negligence, the claimants, who are dependents of deceased Aiyub, cannot claim any amount of compensation. The Tribunal did not give any finding with regard to income of the deceased and to what amount the appellants were entitled to claim being dependents of deceased Aiyub. In the ultimate result, the Tribunal dismissed the claim petition filed by the appellants, which has given rise to filing of the present appeal by the original claimants.

9. Mrs.Yogini Parikh, learned advocate appearing for the appellants, vehemently submitted that deceased Aiyub at the relevant time was not driving the truck. It is submitted that deceased Aiyub was only occupying the seat of the driver while the disabled truck was towed by truck bearing Registration No.GTG 3627. It is submitted by the learned advocate for the appellants that deceased Aiyub did hold a valid driving licence. It is contended that it was for the Insurance Company to prove that deceased Aiyub was not holding driving licence, because it was the defence of the Insurance Company that deceased Aiyub did not hold valid driving licence. Learned advocate for the appellants submitted that, on the contrary, eye-witness, Kalaji Mangaji, had specifically deposed that the deceased was not driving the disabled truck but he was simply sitting on the steering wheel. As per the contention of learned advocate for the appellants, Kalaji Mangaji had deposed that deceased Aiyub did hold driving licence and the deceased had shown his driving licence to witness, Kalaji Mangaji. Learned advocate for the

appellants further urged that the Tribunal erred in coming to the conclusion that the deceased himself was rash and negligent and he was solely responsible for the accident in question. It is further urged that the Tribunal erred in not taking into consideration the fact that respondent No.1, who was driving the offending truck, was driving the truck rashly and negligently and ignoring the fact that he was towing one disabled truck and, therefore, he should have been more cautious. It is argued that, when the offending truck was towing the disabled truck, the driver of the offending truck should have been more careful. It is submitted that the driver of the offending truck in total disregard to the rules framed under the Motor Vehicles Act, had driven his truck rashly and negligently which has caused mishap in which the life of young man of 20 to 22 years old was lost. It is submitted that respondent No.1, who was driver of the offending truck, was solely responsible for causing the accident. It is submitted that the appellants were solely dependant on the income of the deceased, who was the bread-winner of the family. It is contended that the Tribunal had not given any finding with regard to income of the deceased and dependency benefit which could have derived from the income of deceased Aiyub. Learned advocate for the appellants therefore submitted that the driver of the offending truck should be held responsible for causing the accident and a just and adequate compensation should be awarded to the appellants and the appeal be allowed.

10. On the other hand, learned advocate for the Insurance Company, respondent No.3, vehemently contended that deceased Aiyub was negligent and he was driving and occupying the steering wheel of the disabled truck even though he did not possess valid driving licence. It is, therefore, submitted that there was fundamental breach of the policy. Therefore, the Insurance Company cannot be held liable to pay compensation. It is submitted that when the appellants had stated before the Tribunal that deceased Aiyub possessed a valid driving licence, the burden lies on them to produce the driving licence of deceased Aiyub. It is submitted that the deceased himself being negligent, the appellants who are dependents of the deceased, cannot claim compensation. It is, therefore, submitted that the appeal filed by the appellants be dismissed with costs.

11. It is an admitted fact that deceased Aiyub died on March 15, 1980 in a vehicular accident. He was occupying the driver's seat of the disabled truck bearing No.GTK 2113. It is also admitted fact that the offending

truck bearing No.GTG 3627 was driven by respondent No.1 and the respondent No.1 on his own had tied the disabled truck with the offending truck and towed it on the road. Both the trucks, namely GTK 2113 and GTG 3627, were insured with the Insurance Company. Witness, Kalaji Mangaji, Exh.38, specifically deposed that respondent No.1 was driving Truck No.GTG 3627 in rash and negligent manner and with high speed. It is deposed by witness Kalaji Mangaji that, at the time of towing disabled truck, respondent No.1 was told by deceased Aiyub if he applies brakes then he will give warning to deceased Aiyub who was on the steering wheel of the disabled truck. It has come in the evidence of Kalaji Mangaji that the driver of the disabled truck, Budhaji Chhanaji, had instructed deceased Aiyub that he should bring the truck to a garage to get it repaired and, therefore, as per instruction of the driver of the disabled truck, deceased Aiyub brought the disabled truck by getting it towed by the offending truck which was driven by respondent No.1. The deceased Aiyub had carried out the direction of the driver, Budhaji Chhanaji. The deceased was informed by the driver of the disabled truck and, therefore, no negligence can be attributed to him for causing the accident. On the contrary, the evidence of Kalaji Mangaji proves that respondent No.1 was driving truck No.GTG 3627 in rash and negligent manner and at high speed, as a result of which, the disabled truck turned turtle.

12. Witness Kalaji Mangaji (Exh.38) had lodged first information report at Kapadwanj Police Station. Certified copy of the first information report is produced at Exh.39 on the record of the case. The first information report indicates that the witness had taken lift in the disabled truck bearing No.GTK 2113. The said truck did not proceed further as there was air lock of the brakes. The driver of the truck, Budhaji Chhanaji, left the truck and before leaving, the driver had instructed deceased Aiyub to bring the truck to Kapadwanj by tieing with other truck. In the meanwhile, truck bearing No.GTG 3627 came near the disabled truck and respondent No.1, who was driving the said truck, had tied the disabled truck with his truck by a robe. The first information report indicated that respondent No.1 was driving the truck rashly and negligently and had applied brakes all of a sudden as a result of which the disabled truck turned turtle and the rope was broken and deceased Aiyub was thrown out of the truck and had sustained serious injuries. The first information report, in my view, clearly establishes that respondent No.1, who was the driver of truck No.GTG 3627, was rashly and

negligently driving his truck even though he knew that he was towing a disabled truck.

13. Panchnama, Exh 20, which was prepared after the incident, indicates that the truck bearing No. GTK 2113 was lying in turtle condition in a ditch. The panchnama also indicates that the said truck was tied with ropes and broken ropes were found near bonnet of the disabled truck. From the panchanama, it is apparent that no brake marks were found on the road. A conjoint reading of the first information report and the panchanama clearly establishes that respondent No.1, who was driving truck No.GTG 3627, was solely responsible for causing the accident in question. Therefore, the finding of the Tribunal that the accident had taken place due to rash and negligent driving of deceased Aiyub deserves to be set aside and it is held that the accident had taken place due to sole negligence on the part of respondent No.1, who was driving truck bearing No.GTG 3627.

14. Appellant No.1 was examined at Exh.37. He deposed that his son Aiyub was aged 20 to 22 years at the time of the accident and was serving with S.T. Transport Company and was earning Rs.300/- per month and he was also paid allowance of Rs.10/- per day while he was on duty as conductor. It is not possible that Aiyub was getting work of conductor on all the days of the month. Taking into consideration the facts and circumstances of the case, in my opinion, income of deceased Aiyub can be assessed at Rs.450/- per month. Appellant No.1, in his oral testimony, deposed that Aiyub was unmarried at the time of the accident and he was the only son and bread-winner of the family. He deposed that, except Aiyub, he had no other son or daughter. At the time of recording deposition, appellant No.1 was aged about 45 years. In the claim petition, which was filed before the Tribunal, the age of appellant No.2 was mentioned 40 years. Admittedly, Aiyub, at the time of the incident, was unmarried and would have got married within a short period. As per the settled legal principle, Aiyub would have spent 2/3rd of income to maintain his wife and children. The appellants who are the parents of the deceased would be entitled to only 1/3rd of income of the deceased as dependency benefits. The yearly dependency benefit would come to Rs.1800/-. Looking to the age of the appellants, in my opinion, proper multiplier to be adopted in this case would be 15. The appellants are, therefore, entitled to Rs.27,000/(Rs.1800 multiplied by 15) as dependency benefits. Over and above, the appellants would be entitled to Rs.5000/on the head of loss of expectation of life and Rs.1000/as funeral

expenses. As a result of above discussion, the appellants would be entitled to compensation as under:

Rs.27,000.00 Dependency benefits

Rs. 5,000.00 Loss of expectation of life

Rs. 1,000.00 Funeral expenses

Rs.33,000.00

=====

In my opinion, the appellants would be entitled to receive Rs.33,000/- as compensation for accidental and untimely death of deceased Aiyub, who died in vehicular accident due to the sole negligence of respondent No.1, driver of truck bearing No.GTG 3627 who was employee of respondent No.2, Lakshmi Trading Company, and, therefore, respondents Nos. 1 and 2 would be liable to pay compensation. Truck No.GTG 3627 was insured with respondent No.3-Insurance Company and, therefore, under the insurance policy, respondent No.3 was also liable to pay compensation along with respondents Nos. 1 and 2 jointly and severally. The amount of compensation shall carry interest at the rate of 6% per annum from the date of filing of the application till realisation.

15. As a result of foregoing discussion, the appellants would be entitled to compensation of Rs.33,000/- (Rupees thirty three thousand only) with interest at the rate of 6% per annum from the date of application till realisation with proportionate costs from the respondents Nos. 1, 2 and 3 jointly and severally. The respondents are directed to deposit the awarded amount of compensation along with interest and costs in the Motor Accidents Claim Tribunal, Kheda, at Nadiad, within eight weeks from the date of this order. The Tribunal shall pass appropriate orders for disbursement and investment keeping in mind the principles laid down by the Supreme Court and the High Court. The appeal is, therefore, partly allowed with proportionate costs.

(swamy)